

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTONIO GORE,

Petitioner,

No. 2:03-cv-1269 JAM CKD P

vs.

STEPHEN CAMBRA,

Respondent.

ORDER

On April 25, 2012, petitioner filed a motion asking that the district court reconsider its September 29, 2006 order dismissing this action. (Dkt. No. 36.) On June 29, 2012, the district court denied petitioner's motion for reconsideration. (Dkt. No. 40.)

Pending before the court is petitioner's July 25, 2012 motion for a certificate of appealability of the June 29, 2012 order, pursuant to 28 U.S.C. § 2253. (Dkt. No. 41.) Rule 11(a) of the Rules Governing Section 2254 Cases provides: "The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant." Petitioner's request for a certificate of appealability of the district court's June 29, 2012 order is inapposite, as this is not a final order terminating the litigation. See *Corn v. Guam Coral Co.*, 318 F.2d 622, 628–29 (9th Cir. 1963) ("[T]he 'final' judgments, orders or proceedings referred to in the first sentence of [Rule 60(b)] ... are those which terminate the litigation in the district court subject

1 only to the right of appeal”).

2 Here, the district court issued a final order adverse to petitioner on September 29,
3 2006, denying his application for a writ of habeas corpus. (Dkt. No. 28.) The district court
4 subsequently denied petitioner’s request for a certificate of appealability. (Dkt. No. 32.) The
5 Ninth Circuit did the same. (Dkt. No. 35.) At this stage of the proceedings, six years after the
6 entry of judgment, petitioner cannot revisit the question of whether a certificate of appealability
7 should issue.

8 Accordingly, IT IS HEREBY ORDERED that petitioner’s July 25, 2012 motion
9 for certificate of appealability (Dkt. No. 41) is denied.

10 Dated: July 31, 2012

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12 CAROLYN K. DELANEY
13 UNITED STATES MAGISTRATE JUDGE
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